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Common Carrier Bureau  
Network Service Division  
Office of the Chief

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of )  
 )  
RULES PROMOTING )  
EFFICIENT USE, )  
FAIR DISTRIBUTION )  
OF TOLL FREE NUMBERS )

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REPORT NO. CC 97-123  
CC DOCKET NO. 95-155

## PETITION FOR RECONSIDERATION

### EMERGENCY PETITION REQUESTING STAY OF ENFORCEMENT

We request an immediate stay and reconsideration of the above encaptioned rulemaking for the following reasons:

1. Inquiry into the management, business practices and business plans of "telecommunications end-users" is not authorized by the Telecommunications Act of 1996 ("the Act"), which provides only for "Inquiries into Management" of Common Carriers (47 U.S.C. section 218). No inquiry into the management, business practices, business plans, book and records, financial statements, or annual reports of "telecommunications end-users" is expressed or implied by the Telecommunications Act of 1996, and such an inquiry is in direct contravention with the plain meaning of the Act and the expressed intent of the Congress. The Commission is not authorized to require telecommunications end-users to prove "legitimate use", a vague standard at best, before they are allowed to have fair and equitable access to the public telephone network. The Telecommunications Act of 1996 mandates "number portability" and the right of all "telecommunications end-users" to "retain" their multiple "telecommunications numbers." The "legitimate use" standard is unfair, unconscionable, and void for its vagueness.

2. This rule constitutes an unlawful taking of private property by the government, and accordingly it is in contravention of the Fifth Amendment of the U.S. Constitution, as interpreted by the "penumbra" of rights that have been enjoyed under the common law by all telecommunications end-users. It is an established business practice that individuals and businesses, as telecommunications end-users, may own and operate more than one telephone number. Furthermore, Common Carriers have provided continuous support and implemented countless transactions in which toll-free numbers have and can be sold, assigned and transferred between subscribers. These transactions include MCI's purchase of 1-800-COLLECT and 1-800-FREE-CALL, Sprint's purchase of 1-800-THE-MOST, United Airlines purchase of 1-800-SHUTTLE, the sale of 1-800-FLOWERS to its current owner, and countless other transactions. The public has greatly benefited from these established transactions, which involved the release of a toll-free number for a fee, and there is no rational basis or "legitimate governmental interest" for prohibiting such a transaction by either a large or small subscriber. Small subscribers are unduly discriminated against by this rule.

3. By implementing this draconian rule, telecommunications subscribers have less rights and privileges than before the enactment of the Telecommunications Act of 1996. This is very stifling to the intent of Congress. The intention of Congress was to encourage small business, entrepreneurs, and other new telecommunications services, which should rationally include telecommunications companies that develop toll-free intellectual property and marketing programs for sale and/or shared-use licensing. Shared-use licensing is a "new telecommunications service" that is clearly in the "public interest", and which also allows multiple small businesses to subscribe to marketing programs that would not otherwise be available. The Congress intended that these types of new telecommunications services be protected and encouraged under the Telecommunications Act of 1996. The rule

eliminates small telemarketing firms from competing effectively with large carriers, RespOrgs and subscribers. Examples of this include MATRIXX MARKETING, a subsidiary of Cincinnati Bell, which reportedly controls over 21,000 toll-free 800 numbers.

4. Distinguishing "vanity" numbers from numeric toll-free numbers is an irrational classification. There are countless toll-free numbers that have no alphabetic characterization, but nonetheless have tremendous value to their owners. A perfect example is the original EIGHT-OH-OH---THREE-TWO-FIVE---THREE-FIVE--THREE-FIVE... number (800-325-3535) originally owned by Chevron and allegedly sold to Sheraton, which now uses it today. Easy to remember, easy to dial numeric toll-free numbers, or any other toll free or other telecommunications number, are equally important to their telephone subscribers and should be equally protected in the same manner as "vanity" numbers with alphabetic spellings.

5. The entire rulemaking process is not in the public interest and the rights of telecommunications end-users have not been adequately or meaningfully represented. It should be noted that the so-called "Industry", operating in their "official" capacities, does not include adequate or meaningful representation and/or notification that is sufficient for small business telecommunications end-users to participate. For example, the North American Numbering Council (NANC), and the Industry Numbering Council (INC), consists largely of carriers and RespOrgs. It should be further noted that numerous members of our organization have been confronted with documented unconcionable practices by at least two of these "Industry" members, who have attempted to illegally convert toll-free numbers for their own use and benefit. It appears that no subscriber/end-user advocate can be clearly identified in these proceedings. In reading the various comments to rulemaking 95-155, the rule appears to be unconcionably contrary

to the law, the public interest, the comments filed by the public, and the spirit and "plain meaning" of the Telecommunications Act of 1996, and the various pronouncements of the Commission in compliance with the Act. The Commission's representations to Congress regarding its good-faith implementation of the Act appear to be somewhat disingenuous when considered in light of this rulemaking.

WHEREFORE, it is respectfully requested that this Petition, and the previously filed Petitions for Reconsideration filed by Mark D. Olson & Associates Inc. and Tellnet Communications Inc. which are incorporated herein by reference, be granted. In the interim, we hereby request an IMMEDIATE STAY on the effectiveness of this rule. The F.C.C. attorney we have been communicating with, Ms. Erin Duffy, has been out of town to answer our questions regarding this petition. In the event this Petition arrives late, we respectfully request that it be considered with the same weight as a petition arriving within the 30 day petition period, and accordingly an IMMEDIATE STAY OR SUSPENSION of the rule be granted.

Respectfully submitted,

NATIONAL ASSOCIATION OF  
TELECOMMUNICATIONS END-USERS ("NATE")

DATED: May 22, 1997

By: 

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National Association of  
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